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8 ADDITIONAL COUNSEL LISTED ON  
SIGNATURE LINES

9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 CITY OF HEMET,

13 Plaintiff,

14 vs.  
15

16 THE DOW CHEMICAL  
17 COMPANY, ET AL.,

18 Defendants.  
19

Case No. 5:18-cv-02022-MWF (SPx)

Judge: Honorable Michael Fitzgerald

**~~[PROPOSED]~~ STIPULATED  
PROTECTIVE ORDER<sup>1</sup>**

20 1. A. PURPOSES AND LIMITATIONS

21 Discovery in this action is likely to involve production of confidential,  
22 proprietary, or private information for which special protection from public  
23 disclosure and from use for any purpose other than prosecuting this litigation may  
24 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
25

26 \_\_\_\_\_  
27 <sup>1</sup> This Stipulated Protective Order is substantially based on the model protective  
28 order under Magistrate Judge Sheri Pym's Procedures.

1 enter the following Stipulated Protective Order. The parties acknowledge that this  
2 Order does not confer blanket protections on all disclosures or responses to  
3 discovery and that the protection it affords from public disclosure and use extends  
4 only to the limited information or items that are entitled to confidential treatment  
5 under the applicable legal principles. The parties further acknowledge, as set forth  
6 in Section 12.3, below, that this Stipulated Protective Order does not entitle them  
7 to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
8 procedures that must be followed and the standards that will be applied when a  
9 party seeks permission from the court to file material under seal.

#### 11 **B. GOOD CAUSE STATEMENT**

12 This action is likely to involve commercial, financial, technical and/or  
13 proprietary information for which special protection from public disclosure and  
14 from use for any purpose other than prosecution of this action is warranted. Such  
15 confidential and proprietary materials and information consist of, among other  
16 things:

- 17 1. the physical address or geographic location of public drinking water  
18 wells, storage facilities, pumping stations and water treatment facilities;
- 19 2. water system schematics and facility maps;
- 20 3. water pipeline maps;
- 21 4. water system facility plans and specifications;
- 22 5. water system vulnerabilities which have not been publicly disclosed;
- 23 6. water system hydraulics or operational practices;
- 24 7. emergency operations and response plans for water systems;
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1           8.     water system security plans, practices and/or precautions, including  
2 planned security enhancements;

3  
4           9.     personal information about the parties' past or present employees or  
5 third-party witnesses, such as home phone numbers or addresses; and

6  
7           10.    product formulation information and ingredients statements.  
8

9           Accordingly, to expedite the flow of information, to facilitate the prompt  
10 resolution of disputes over confidentiality of discovery materials, to adequately  
11 protect information the parties are entitled to keep confidential, to ensure that the  
12 parties are permitted reasonable necessary uses of such material in preparation for  
13 and in the conduct of trial, to address their handling at the end of the litigation, and  
14 serve the ends of justice, a protective order for such information is justified in this  
15 matter. It is the intent of the parties that information will not be designated as  
16 confidential for tactical reasons and that nothing be so designated without a good  
17 faith belief that it has been maintained in a confidential, non-public manner, and  
18 there is good cause why it should not be part of the public record of this case.  
19

20   2.     DEFINITIONS

21           2.1 Action: The related actions under Hon. Judge Michael Fitzgerald,  
22 currently including: *City of Hemet v. The Dow Chemical Company, et al.*, Case No.  
23 5:18-cv-02022-MWF (SPx), *Golden State Water Company v. The Dow Chemical*  
24 *Company, et al.*, Case No. 2:18-cv-08199-MWF-(SPx), and *City of Arcadia v. The*  
25 *Dow Chemical Company, et al.*, Case No. 2:18-cv-10139-MWF (SPx), and all  
26 actions subsequently related to the previously listed actions.  
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1           2.2 Challenging Party: a Party or Non-Party that challenges the designation  
2 of information or items under this Order.

3           2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
4 how it is generated, stored or maintained) or tangible things that qualify for  
5 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
6 the Good Cause Statement.

7           2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
8 support staff).

9           2.5 Designating Party: a Party or Non-Party that designates information or  
10 items that it produces in disclosures or in responses to discovery as  
11 “CONFIDENTIAL.”

12           2.6 Disclosure or Discovery Material: all items or information, regardless of  
13 the medium or manner in which it is generated, stored, or maintained (including,  
14 among other things, testimony, transcripts, and tangible things), that are produced  
15 or generated in disclosures or responses to discovery in this matter.

16           2.7 Expert: a person with specialized knowledge or experience in a matter  
17 pertinent to the litigation who has been retained by a Party or its counsel to serve  
18 as an expert witness or as a consultant in this Action.

19           2.8 House Counsel: attorneys who are employees of a party to this Action.  
20 House Counsel does not include Outside Counsel of Record or any other outside  
21 counsel.

22           2.9 Non-Party: any natural person, partnership, corporation, association, or  
23 other legal entity not named as a Party to this action.

24           2.10 Outside Counsel of Record: attorneys who are not employees of a party  
25 to this Action but are retained to represent or advise a party to this Action and have  
26 appeared in this Action on behalf of that party or are affiliated with a law firm  
27 which has appeared on behalf of that party, and includes support staff.

1           2.11 Party: any party to this Action, including all of its officers, directors,  
2 employees, consultants, retained experts, and Outside Counsel of Record (and their  
3 support staffs).

4           2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
5 Discovery Material in this Action.

6           2.13 Professional Vendors: persons or entities that provide litigation support  
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
9 and their employees and subcontractors.

10          2.14 Protected Material: any Disclosure or Discovery Material that is  
11 designated as “CONFIDENTIAL.”

12          2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
13 from a Producing Party.

14  
15       3.     SCOPE

16           The protections conferred by this Stipulation and Order cover not only  
17 Protected Material (as defined above), but also (1) any information copied or  
18 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
19 compilations of Protected Material; and (3) any testimony, conversations, or  
20 presentations by Parties or their Counsel that might reveal Protected Material.  
21 Any use of Protected Material at trial shall be governed by the orders of the trial  
22 judge. This Order does not govern the use of Protected Material at trial.

23  
24       4.     DURATION

25           Even after final disposition of this litigation, the confidentiality obligations  
26 imposed by this Order shall remain in effect until a Designating Party agrees  
27 otherwise in writing or a court order otherwise directs. Final disposition shall be  
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1 deemed to be the later of (1) dismissal of all claims and defenses in the Action and  
2 all other similar pending litigation, defined as any case brought by counsel for the  
3 plaintiffs in the Action against one or more of the defendants in the Action on  
4 behalf of a public water purveyor for the contamination of drinking water supplies  
5 with 1,2,3-trichloropropane; and (2) final judgment herein after the completion and  
6 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
7 including the time limits for filing any motions or applications for extension of  
8 time pursuant to applicable law.

9  
10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection under  
13 this Order must take care to limit any such designation to specific material that  
14 qualifies under the appropriate standards. The Designating Party must designate for  
15 protection only those parts of material, documents, items, or oral or written  
16 communications that qualify so that other portions of the material, documents,  
17 items, or communications for which protection is not warranted are not swept  
18 unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations  
20 that are shown to be clearly unjustified or that have been made for an improper  
21 purpose (e.g., to unnecessarily encumber the case development process or to  
22 impose unnecessary expenses and burdens on other parties) may expose the  
23 Designating Party to sanctions.

24 If it comes to a Designating Party's attention that information or items that it  
25 designated for protection do not qualify for protection, that Designating Party must  
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1           5.2 Manner and Timing of Designations. Except as otherwise provided in  
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
4 under this Order must be clearly so designated before the material is disclosed or  
5 produced.

6           Designation in conformity with this Order requires:

7                   (a) for information in documentary form (e.g., paper or electronic  
8 documents, but excluding transcripts of depositions or other pretrial or trial  
9 proceedings), that the Producing Party affix at a minimum, the legend  
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page  
11 that contains protected material. If only a portion or portions of the material  
12 on a page qualifies for protection, the Producing Party also must clearly  
13 identify the protected portion(s) (e.g., by making appropriate markings in the  
14 margins).

15           A Party or Non-Party that makes original documents available for  
16 inspection need not designate them for protection until after the inspecting  
17 Party has indicated which documents it would like copied and produced.  
18 During the inspection and before the designation, all of the material made  
19 available for inspection shall be deemed “CONFIDENTIAL.” After the  
20 inspecting Party has identified the documents it wants copied and produced,  
21 the Producing Party must determine which documents, or portions thereof,  
22 qualify for protection under this Order. Then, before producing the specified  
23 documents, the Producing Party must affix the “CONFIDENTIAL legend”  
24 to each page that contains Protected Material. If only a portion or portions of  
25 the material on a page qualifies for protection, the Producing Party also must  
26 clearly identify the protected portion(s) (e.g., by making appropriate  
27 markings in the margins).

1 (b) for testimony given in depositions that the Designating Party  
2 identify the Disclosure or Discovery Material on the record, before the close  
3 of the deposition all protected testimony.

4 (c) for information produced in some form other than documentary  
5 and for any other tangible items, that the Producing Party affix in a  
6 prominent place on the exterior of the container or containers in which the  
7 information is stored the legend "CONFIDENTIAL." If only a portion or  
8 portions of the information warrants protection, the Producing Party, to the  
9 extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
11 failure to designate qualified information or items does not, standing alone, waive  
12 the Designating Party's right to secure protection under this Order for such  
13 material. Upon timely correction of a designation, the Receiving Party must make  
14 reasonable efforts to assure that the material is treated in accordance with the  
15 provisions of this Order.

16  
17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
19 designation of confidentiality at any time that is consistent with the Court's  
20 Scheduling Order.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
22 resolution process under Local Rule 37-1 et seq.

23 6.3 The burden of persuasion in any such challenge proceeding shall be on  
24 the Designating Party. Frivolous challenges, and those made for an improper  
25 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
26 parties) may expose the Challenging Party to sanctions. Unless the Designating  
27 Party has waived or withdrawn the confidentiality designation, all parties shall  
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1 continue to afford the material in question the level of protection to which it is  
2 entitled under the Producing Party's designation until the Court rules on the  
3 challenge.

4  
5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
7 disclosed or produced by another Party or by a Non-Party in connection with this  
8 Action only for prosecuting, defending, or attempting to settle this Action. Such  
9 Protected Material may be disclosed only to the categories of persons and under  
10 the conditions described in this Order. When the Action has been terminated, a  
11 Receiving Party must comply with the provisions of section 13 below (FINAL  
12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a  
14 location and in a secure manner that ensures that access is limited to the persons  
15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
17 otherwise ordered by the court or permitted in writing by the Designating Party, a  
18 Receiving Party may disclose any information or item designated  
19 "CONFIDENTIAL" only to:

- 20 (a) the Receiving Party's Outside Counsel of Record in this Action, as  
21 well as employees of said Outside Counsel of Record to whom it is  
22 reasonably necessary to disclose the information for this Action; (b) the  
23 officers, directors, and employees (including House Counsel) of the  
24 Receiving Party to whom disclosure is reasonably necessary for this Action;  
25 (c) Experts (as defined in this Order) of the Receiving Party to whom  
26 disclosure is reasonably necessary for this Action and who have signed the  
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);  
28

1 (d) the court and its personnel;

2 (e) court reporters and their staff;

3 (f) professional jury or trial consultants, mock jurors, and Professional  
4 Vendors to whom disclosure is reasonably necessary for this Action and who  
5 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
6 A);

7 (g) the author or recipient of a document containing the information or  
8 a custodian or other person who otherwise possessed or knew the  
9 information;

10 (h) during their depositions, witnesses, and attorneys for witnesses, in  
11 the Action to whom disclosure is reasonably necessary provided: (1) the  
12 deposing party requests that the witness sign the form attached as Exhibit 1  
13 hereto; and (2) they will not be permitted to keep any confidential  
14 information unless they sign the “Acknowledgment and Agreement to Be  
15 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or  
16 ordered by the court. Pages of transcribed deposition testimony or exhibits to  
17 depositions that reveal Protected Material may be separately bound by the  
18 court reporter and may not be disclosed to anyone except as permitted under  
19 this Stipulated Protective Order; and

20 (i) any mediator or settlement officer, and their supporting personnel,  
21 mutually agreed upon by any of the parties engaged in settlement  
22 discussions.

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24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
25 IN OTHER LITIGATION  
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1 If a Party is served with a subpoena or a court order issued in other litigation  
2 that compels disclosure of any information or items designated in this Action as  
3 “CONFIDENTIAL,” that Party must:

4 (a) promptly notify in writing the Designating Party. Such notification  
5 shall include a copy of the subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or  
7 order to issue in the other litigation that some or all of the material covered  
8 by the subpoena or order is subject to this Protective Order. Such  
9 notification shall include a copy of this Stipulated Protective Order; and

10 (c) cooperate with respect to all reasonable procedures sought to be  
11 pursued by the Designating Party whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order, the Party served  
13 with the subpoena or court order shall not produce any information designated in  
14 this action as “CONFIDENTIAL” before a determination by the court from which  
15 the subpoena or order issued, unless the Party has obtained the Designating Party’s  
16 permission. The Designating Party shall bear the burden and expense of seeking  
17 protection in that court of its confidential material and nothing in these provisions  
18 should be construed as authorizing or encouraging a Receiving Party in this Action  
19 to disobey a lawful directive from another court.  
20

21 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
22 PRODUCED IN THIS LITIGATION

23 (a) The terms of this Order are applicable to information produced by  
24 a Non-Party in this Action and designated as “CONFIDENTIAL.” Such  
25 information produced by Non-Parties in connection with this litigation is  
26 protected by the remedies and relief provided by this Order. Nothing in these  
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provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1           If a Receiving Party learns that, by inadvertence or otherwise, it has  
2 disclosed Protected Material to any person or in any circumstance not authorized  
3 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
4 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
5 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
6 the person or persons to whom unauthorized disclosures were made of all the terms  
7 of this Order, and (d) request such person or persons to execute the  
8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
9 A.

10  
11   11.   INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
12 PROTECTED MATERIAL

13           When a Producing Party gives notice to Receiving Parties that certain  
14 inadvertently produced material is subject to a claim of privilege or other  
15 protection, the obligations of the Receiving Parties are those set forth in Federal  
16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
17 whatever procedure may be established in an e-discovery order that provides for  
18 production without prior privilege review. Pursuant to Federal Rule of Evidence  
19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
20 of a communication or information covered by the attorney-client privilege or  
21 work product protection, the parties may incorporate their agreement in the  
22 stipulated protective order submitted to the court.

23  
24   12.   MISCELLANEOUS

25           12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
26 person to seek its modification by the Court in the future.

1           12.2 Right to Assert Other Objections. By stipulating to the entry of this  
2 Protective Order no Party waives any right it otherwise would have to object to  
3 disclosing or producing any information or item on any ground not addressed in  
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
5 any ground to use in evidence of any of the material covered by this Protective  
6 Order.

7           12.3 Filing Protected Material. A Party that seeks to file under seal any  
8 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
9 may only be filed under seal pursuant to a court order authorizing the sealing of the  
10 specific Protected Material at issue. If a Party's request to file Protected Material  
11 under seal is denied by the court, then the Receiving Party may file the information  
12 in the public record unless otherwise instructed by the court.

13  
14       13.   FINAL DISPOSITION

15           After the final disposition of this Action, as defined in paragraph 4, within  
16 60 days of a written request by the Designating Party, each Receiving Party must  
17 return all Protected Material to the Producing Party or destroy such material. As  
18 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
19 compilations, summaries, and any other format reproducing or capturing any of the  
20 Protected Material. Whether the Protected Material is returned or destroyed, the  
21 Receiving Party must submit a written certification to the Producing Party (and, if  
22 not the same person or entity, to the Designating Party) by the 60 day deadline that  
23 (1) identifies (by category, where appropriate) all the Protected Material that was  
24 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
25 copies, abstracts, compilations, summaries or any other format reproducing or  
26 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
27 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
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1 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
2 and trial exhibits, expert reports, attorney work product, and consultant and expert  
3 work product, even if such materials contain Protected Material. Any such archival  
4 copies that contain or constitute Protected Material remain subject to this  
5 Protective Order as set forth in Section 4 (DURATION).

6  
7 14. VIOLATION

8 Any violation of this Order may be punished by any and all appropriate  
9 measures including, without limitation, contempt proceedings and/or monetary  
10 sanctions.

11 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

12  
13  
14 DATED: January 31, 2019

Respectfully submitted,

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Attorneys for Defendant SHELL OIL  
COMPANY, d/b/a “SHELL CHEMICAL  
COMPANY,”



1 **CERTIFICATION OF CONCURRENCE FROM ALL SIGNATORIES**

2 I, Seth D. Mansergh, am the ECF user whose identification and password are  
3 being used to file this Stipulated Protective Order. In compliance with Local Rule  
4 5-4.3.4(a)(2)(i), I hereby attest that I have obtained the concurrence of each  
5 signatory to this document.

6 */s/ Seth D. Mansergh*

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10 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

11  
12 Dated: February 12, 2019



13 HON. SHERI PYM

14 United States Magistrate Judge  
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
5 that I have read in its entirety and understand the Stipulated Protective Order that  
6 was issued by the United States District Court for the Central District of California  
7 on \_\_\_\_\_ [date] in the related actions under Hon. Judge Michael  
8 Fitzgerald, currently including: *City of Hemet v. The Dow Chemical Company, et*  
9 *al.*, Case No. 5:18-cv-02022-MWF (SPx), *Golden State Water Company v. The*  
10 *Dow Chemical Company, et al.*, Case No. 2:18-cv-08199-MWF-(SPx), and *City of*  
11 *Arcadia v. The Dow Chemical Company, et al.*, Case No. 2:18-cv-10139-MWF  
12 (SPx), and all actions subsequently related to the previously listed actions. I agree  
13 to comply with and to be bound by all the terms of this Stipulated Protective Order  
14 and I understand and acknowledge that failure to so comply could expose me to  
15 sanctions and punishment in the nature of contempt. I solemnly promise that I will  
16 not disclose in any manner any information or item that is subject to this Stipulated  
17 Protective Order to any person or entity except in strict compliance with the  
18 provisions of this Order.

19 I further agree to submit to the jurisdiction of the United States District  
20 Court for the Central District of California for the purpose of enforcing the terms  
21 of this Stipulated Protective Order, even if such enforcement proceedings occur  
22 after termination of this action. I hereby appoint \_\_\_\_\_  
23 [print or type full name] of \_\_\_\_\_ [print  
24 or type full address and telephone number] as my California agent for service of  
25 process in connection with this action or any proceedings related to enforcement of  
26 this Stipulated Protective Order  
27  
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1 Date: \_\_\_\_\_

2 City and State where sworn and signed: \_\_\_\_\_

3 Printed name: \_\_\_\_\_

4 Signature: \_\_\_\_\_

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